

House Bill 249 (AS PASSED HOUSE AND SENATE)

By: Representatives Martin of the 47th, Smith of the 113th, Stephens of the 164th, Loudermilk of the 14th, Maxwell of the 17th, and others

A BILL TO BE ENTITLED
AN ACT

To amend Article 7 of Chapter 7 of Title 47 of the Official Code of Georgia Annotated, relating to miscellaneous provisions relative to the Georgia Firefighters' Pension Fund, so as to define a certain term; to provide that such fund may invest fund assets in certain types of alternative investments, private placements, and other private investments; to provide that such investments may be made up to a certain amount; to shield information related to such investment from public scrutiny; to provide for a code of ethics; to amend Code Section 50-18-72 of the Official Code of Georgia Annotated, relating to when public disclosure of records is not required and disclosure exempting legal authority, so as to exempt certain public records from public inspection; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 7 of Chapter 7 of Title 47 of the Official Code of Georgia Annotated, relating to miscellaneous provisions relative to the Georgia Firefighters' Pension Fund, is amended by adding a new Code section to read as follows:

"47-7-127.

(a) As used in this Code section, the term 'alternative investments' means the following investments:

(1) Privately placed investment pools, including, without limitation, private investment funds, such as:

(A) Leveraged buyout funds;

(B) Mezzanine funds;

(C) Workout funds;

(D) Debt funds;

(E) Venture capital funds;

(F) Merchant banking funds; and

(G) Funds of funds and secondary funds

that include investments in privately placed investment pools described in this paragraph, in each case whether structured as a partnership, limited liability company, trust, corporation, joint venture, or other entity or investment vehicle of any type; organized or operating in one of the states or territories of the United States or outside the United States; invested in the United States or outside the United States or any combination thereof; or as investments of the type described in paragraph (2) of this subsection or other investments of any type or any combination thereof;

(2) Private placements and other private investments, including without limitation:

(A) Leveraged buyouts;

(B) Venture capital investment;

(C) Equity investments, including, without limitation, preferred and common stock;

(D) Warrants;

(E) Options;

(F) Private investments in public securities;

(G) Recapitalizations;

(H) Privatizations;

(I) Mezzanine debt investments;

(J) Distressed debt and equity investments, including, without limitation, cases in which the investor may take control of the issuer;

(K) Other debt investments, whether secured or unsecured, senior or subordinated, recourse or nonrecourse, convertible, or otherwise;

(L) Convertible securities;

(M) Receivables;

(N) Interests, as such term is referred to in Sections 501 and 502 of Title 11 of the United States Code;

(O) Claims, as such term is defined in paragraph (5) of Section 101 of Title 11 of the United States Code;

(P) Debt and equity derivative instruments of all types; and

(Q) All other debt and equity private placements of all types, in each case whether issued by a partnership, limited liability company, trust, corporation, joint venture, or other entity or vehicle of any type or whether the issuer is organized or does business in one of the states or territories of the United States or outside the United States; and

(3) Any distribution in kind received by the fund in connection with any investment described in paragraphs (1) and (2) of this subsection.

(b) In addition to the eligible investments authorized by Code Section 47-20-82, and without applicability of any restrictions set forth in Code Sections 47-20-83 and 47-20-84, the fund is authorized to invest in alternative investments in accordance with the provisions

of this Code section. Further, when provisions of Code Section 47-20-83 or 47-20-84 or any provisions of this article other than this Code section limit a particular form of investment to a certain percentage of fund assets, the denominator will include alternative investments with all other investments, but the numerator for any such calculation will not include any alternative investments, even if any such alternative investment is of a like kind as the investments that are included in the numerator.

(c) An alternative investment may not exceed in any case 20 percent of the aggregate amount of:

(1) The capital to be invested in the applicable private pool, including all parallel pools and other related investment vehicles established as part of the investment program of the applicable private pool; and

(2) The securities being issued in the applicable private placement, in each case determined at the time such alternative investment is initially either made or committed to be made, as applicable, but taking into consideration any investments that have previously been or are concurrently being made or committed to be made.

Each alternative investment by the fund shall have previously been or shall be concurrently made or committed to be made by at least four other investors not affiliated with the issuer. Such four other investors shall be investing on substantially the same terms and conditions as those applicable to the investment by the fund to the extent such other investors are similarly situated with the fund. Alternative investments shall only be made in private pools and issuers that have at least \$100 million in assets, including committed capital, at the time the investment is initially made or committed to be made by the fund.

(d) Alternative investments by the fund may not in the aggregate exceed 5 percent of fund assets at any time. The board shall have the discretion to designate whether any investment that is permitted to be made as an alternative investment pursuant to this Code section and is also permitted to be made as an investment pursuant to Code Section 47-20-83 shall be treated for purposes of the 5 percent limitation and otherwise as an alternative investment made pursuant to this Code section or as an investment made pursuant to Code Section 47-20-83. If the fund is not in compliance with the limitations imposed by this subsection, it shall make a good faith effort to come into compliance within two years and in any event as soon as practicable thereafter; provided, however, that during any period of noncompliance the fund shall not increase the percentage of its assets committed to be invested in alternative investments but shall be permitted during such period to continue to make investments as required by the then existing commitments of the fund to alternative investments made before the period of noncompliance.

(e)(1) As used in this subsection, the term 'proprietary information' means information which meets all of the following criteria:

(A) The information is known outside the portfolio manager only to actual and potential investors who have signed a nondisclosure agreement prior to receiving any information, which nondisclosure agreement is required to be signed by participants in the investment, and breach of confidentiality by the investors would be grounds for terminating the investment contract between the investor and the portfolio manager;

(B) The information collected by the portfolio manager requires specialized expertise and experience to research companies in which the firm invests, the market for those companies, and their competitors. The portfolio manager has its own proprietary means of selecting companies in which to invest and for packaging portfolios for the limited partners, and research processes, methodologies and qualitative analysis of the data are unique and specialized in each firm's organization. Additional value may be added to the information with analysis, assessment, and conclusions, which serve as the basis for the investor's decision to invest in a portfolio; and

(C) The portfolio manager guards the secrecy and confidentiality of the information in their proprietary databases during all phases of its work, including research, analysis, marketing, and dissemination and access to the information within the portfolio manager or partnership is limited to the researchers, analysts, and senior management of the general partner who put the information together for the limited partners and the limited partners and the persons in their financial operations who have signed the nondisclosure agreement.

(2) In addition to those records identified in Code section 47-1-14, and notwithstanding to provisions of Code Section 50-18-72, proprietary information shall be exempt from public disclosure for a period of two years from the date the fund enters into a nondisclosure as provided in paragraph (1) of this subsection.

(3) The fund shall make publicly available the following nonproprietary information after a period of one year from the date such records were created:

(A) The name of any alternative investment in which the fund has invested; excluding, in the case of an alternative investment in a privately placed investment pool, any information concerning the investments made by such privately placed investment pool;

(B) The date the fund first invested in an alternative investment described in paragraph (1) of this subsection;

(C) The aggregate amount of money, expressed in dollars, the fund has invested in alternative investments as of the end of any fiscal quarter;

(D) The aggregate amount of money and the value of any in kind or other distribution, in each case, expressed in dollars, the fund received from alternative investments;

(E) The aggregate internal rate of return or the result under any other such standard used by the fund in connection with alternative investments for the asset class and for the period for which the return or standard was calculated; and

(F) The remaining aggregate cost of alternative investments in which the fund has invested as of the end of any fiscal quarter.

(4) The provisions of this Code section shall not restrict access to information and records under process of law or by officers otherwise entitled to them for official purposes, but such information and records shall have the same confidential status under process or with such officers as it does in the hands of the fund, and such officers shall respect such confidentiality to the extent consistent with their separate powers and duties.

(5) On the first Monday in March of each year, the executive director of the board shall provide a report to the Governor and the chairpersons of the House and Senate standing committees on retirement detailing the performance of the investments made pursuant to this Code section including, without limitation, a clear statement of the aggregate loss or profit on such investments for the preceding year. This paragraph shall not be construed so as to require the disclosure of any information otherwise protected by this subsection.

(f) The board shall adopt a code of ethics for the consideration of and investment in and disposition of alternative investments.

(g) Funds invested pursuant to this Code section and any return on such investment shall remain funds of this fund."

SECTION 2.

Code Section 50-18-72 of the Official Code of Georgia Annotated, relating to when public disclosure of records is not required and disclosure of exempting legal authority, is amended by revising subsection (a) by striking "or" at the end of paragraph (21), by replacing the period with "; or" at the end of paragraph (22), and by adding a new paragraph to read as follows:

"(23) Records that are expressly exempt from public inspection pursuant to Code Sections 47-1-14 and 47-7-127."

SECTION 3.

All laws and parts of laws in conflict with this Act are repealed.